

**BEFORE THE WESTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD**

1000 FRIENDS OF WASHINGTON and PRO-WHATCOM,

Petitioners,

v.

WHATCOM COUNTY,

Respondent.

No. 04-2-0010

**ORDER ON  
MOTION TO  
DISMISS**

THIS MATTER comes before the Board on ~~the~~ Respondent County's motions to dismiss or stay certain claims asserted by the Petitioners. *Respondent's Dispositive Motions, June 22, 2004*. Petitioners filed their opposition to the County's motions on July 2, 2004. *Response to Motions, June[sic] 2, 2004*. The Respondent's motions were heard by the Board on July 8, 2004. David Grant represented the Respondent County. John Zilavy represented the Petitioners. All three Board members attended.

**I. SUMMARY**

We find that the challenged ordinance, Ordinance #2004-017, was not an update of the County's comprehensive plan (or part of it) pursuant to RCW 36.70A.130(1)(a) and (2) because it does not meet the minimum statutory requirements for "legislative action" as part of an update. Therefore, the ordinance is only subject to the Board's review to determine whether the amendments adopted in the ordinance themselves comply with the Growth Management Act (GMA). When the County takes (or fails to take) timely legislative action pursuant to RCW 36.70A.130 in fulfillment of its update obligations, the issues raised here regarding County compliance with the GMA as to its revisions to (or failure to revise) the rural element of its comprehensive plan may be brought.

## II. DISCUSSION OF THE ISSUES

The County raises four motions to dismiss or stay claims:

1. Motion for Dismissal due to Untimely Challenge;
2. Motion for Dismissal without Prejudice or in the Alternative a Stay;
3. Motion to Dismiss (Issues 1 and 3: LAMIRDs<sup>1</sup> as optional); and,
4. Motion to Dismiss Due to Lack of Standing

Respondent's Dispositive Motions at 2.

We will first address the motion to dismiss due to lack of standing because standing is a basic requirement to raise issues before the Board. Second, we will address the motion to dismiss on the basis of ripeness; and third, we address the related motion to dismiss for lack of timeliness. Because we find that the challenged ordinance is not an update within the meaning of RCW 36.70A.130(1)(a) and (2)(a), we dismiss without prejudice the issues regarding the County's obligations to review and revise its limited areas of more intense rural development (LAMIRD) as part of its update. Fourth, however, to the extent that the challenges to the County's compliance with the GMA provisions regarding LAMIRDs reach only the amendments to the comprehensive code language adopted in Ordinance 2004-017, those issues may go forward to the hearing on the merits; we find that compliance with the provisions of RCW 36.70A.070(5)(d) is not optional if the County decides to allow areas of more intensive development in the rural zones.

### ***1. Motion To Dismiss Due To Lack Of Standing***

The County argues that the Petitioners only have standing to challenge those geographic areas about which Petitioners made specific comments in the County proceedings below. *Respondent's Memorandum in Support of Dispositive Motions at*

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<sup>1</sup> LAMIRD is an acronym for the phrase "limited areas of more intensive rural development" used in RCW 36.70A.070(5)(d)

8-9. While the County admits that the Petitioners “suggested suburban enclaves in general could be redesignated utilizing the LAMIRD [Limited Areas of More Intensive Rural Development] criteria”, it argues that the comments about it and other rural area designations were so broadly or vaguely stated as to be of no value in the legislative process. *Ibid* at 9.

Petitioners respond by pointing to the comment letters that they submitted to the County Council. These include a 12-page letter from 1000 Friends of Washington Planning Director, Tim Trihimovich, dated February 10, 2004. Index #29. This letter urged the County Council to modify the boundaries of Suburban Enclaves, Resort Residential Subdivisions and similar rural designations that allow more intense uses to comply with the GMA requirements for a logical outer boundary (RCW 36.70A.070(5)(d)(iv)); eliminate the comprehensive plan designations and zones that have densities greater than one dwelling unit per five acres from the rural area outside property designated as LAMIRDs and historic towns; and zone lands within the urban growth area at a density of at least four dwelling units per acre unless the lands have extensive critical areas or resource land. In the letter, Petitioners also supported enumerated proposed revisions. *Ibid*. The letter went into further detail with respect to each of these points, citing provisions of the County’s existing comprehensive plan that they considered inconsistent with the GMA and suggesting changes. *Ibid*. Other letters submitted by the Petitioners raise concerns about strengthening housing policies; increasing residential densities in urban growth areas; redesignation of a working dairy farm from urban residential and R5 to agricultural use; as well as addressing concerns about LAMIRDs and residential densities in rural zones. Index 213, 214.

The Petition for Review tracks the comment letters in challenging the use of Small Towns, Crossroads Commercial, Suburban Enclave, Transportation Corridor and

Resort/Recreational designations where they do not meet the criteria of RCW 36.70A.070(5)(d) for more intense uses in rural areas (Issue 1); challenges designations that allow urban densities outside urban growth areas and the failure to protect rural lands and character (Issue 2); and challenges the comprehensive plan and zoning maps that apply the higher densities to lands in the rural area without complying with RCW 36.70A.070(5) and other cited provisions of the GMA (Issue 3). Petition for Review, Issues 1-3. The comment letters specifically advised the County that the Petitioners believe that the County has an obligation to revise its comprehensive plan policies and development regulations to comport with the GMA requirements for more intensive rural development in the rural zones. Index #29; Index #213. Issues 5-6 of the Petition for Review bring those same issues to this Board.<sup>2</sup>

The County appears to argue that Petitioners should not be allowed to bring the claims they have brought because the claims are too general. We do not agree that these claims are too general; they address planning policies that are inherently broad. Moreover, Petitioners tie their concerns to specific provisions of the County's comprehensive plan. The essence of the Petitioners' claims is that the County policies allowing the challenged designations fail to comply with the GMA. This is what they told the County Council and this is what they allege to the Board in this case.

RCW 36.70A.280(2) confers standing upon "a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested." In support of its position that the Petitioners only have standing as to those matters that were raised in specific geographic detail to the County Council, the County cites the case of *Wells v. Western Washington Growth Mgmt Hearings Bd., et al.*, 100 Wn. App. 657, 997 P.2d 405 (Div. I, 2000). In *Wells*, the court held that to

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<sup>2</sup> The comment letters also address Issue #4 of the Petition for Review – allowing the designation of UR3 (three dwelling units per acre in an urban zone). Index #29 and 213.

have standing to raise a matter to the boards, a participant in the hearings below must have raised the matter to the legislative decision-makers at the local level first. *Ibid* at 674 . However, the court expressly found that a participant need not have raised a specific legal issue in the local proceedings, but instead must have raised the subject or topic of concern. *Ibid* at 671. Holding that the term “matter” was neither so narrow as to require that a specific legal issue was raised nor so broad as to allow standing based on participation regarding the ordinance generally, the *Wells* court adopted the *Alpine v. Kitsap County*, CPSGMHB Case No. 98-3-0032 (Order on Dispositive Motions, October 7, 1998) test for participatory standing:

***If a petitioner’s participation is reasonably related to the petitioner’s issue as presented to the Board, then the petitioner has standing to raise and argue that issue; if the petitioner’s participation is not reasonably related to the petitioner’s issue as presented to the Board, then the petitioner does not have standing to raise and argue that issue.***

*Wells v. Western Washington Growth Mgmt Hearings Bd., et al.*,  
100 Wn. App. 657, 673, 997 P.2d 405 (Div. I, 2000)(emphasis added)

The extensive comments submitted to the County by Petitioners regarding Ordinance 2004-0017 raise the matters which are challenged in the petition for review and are reasonably related to the issues in this case.

***Conclusion:*** We find that the Petitioners’ participation in the County’s proceedings below is reasonably related to all the issues they have presented in their petition for review and that they therefore have standing to raise and argue all of them.

## **2. Motion For Dismissal Without Prejudice Or In The Alternative A Stay**

The County argues that Issues 5, 6, and 7 are prematurely raised and are not yet ripe for review. *Respondent’s Memorandum in Support of Dispositive Motions* at 4. Issues 5 and 6 allege that the County has failed in its duty to revise the comprehensive plan provisions specified in Issues 1-4 in violation of RCW 36.70A.130. Issue 7

alleges that the violations alleged substantially interfere with the fulfillment of the goals of the GMA and therefore the challenged enactments should be found invalid.

The County bases its motion for dismissal or a stay of the proceedings upon the fact that, under the GMA schedule for updates, the County has until December 1, 2004 to complete its update of its comprehensive plan and development regulations. RCW 36.70A.130(4)(a). Because the deadline has not yet passed, the County argues, it cannot yet be found to have failed in its obligations to review and revise its comprehensive plan. *Ibid* at 5.

Petitioners counter that they have not alleged a failure to act on the County's part but a failure by the County "to adopt a comprehensive plan and development regulations incorporating the necessary revisions to bring it into GMA compliance." Response to Motions at 4-5. Petitioners also argue that the County has in fact finished its update of the rural element of its comprehensive plan, pointing to Ordinance 2004-0017 that they claim states it is the update required under RCW 36.70A.130 of the rural element and the land use element (with the exception of the urban growth areas). *Ibid* at 5. Petitioners note that the docket for comprehensive plan amendments shows no other amendments to the rural element are scheduled to be considered in this year's cycle. *Ibid* at 8; Index 173.

The County responds that, while no further amendments to the rural element are docketed, it *could* adopt such amendments through an emergency ordinance. Whatcom County Code 20.10.070. The County carefully does not state that any such amendments to the rural element are contemplated, only that they are possible.

The threshold question that we must answer is whether Ordinance 2004-017 is an update of the County's comprehensive plan (or part of it) pursuant to RCW

36.70A.130(1)(a) and (2)(a). We look to RCW 36.70.130 to determine what is required for an update. This provision of the GMA (RCW 36.70.130) contains two major kinds of revision requirements for comprehensive plans and development regulations. First, comprehensive plans and development regulations adopted pursuant to Ch. 36.70A RCW are subject to “continuing review and evaluation”. While there is no express requirement that this be done every year, this type of review is usually done in an annual comprehensive amendment cycle, RCW 36.70A.130(2)(a). The amendments adopted under this process may be appealed to the boards to determine whether the adopted amendments comply with the GMA; but these types of amendments are not required to ensure that the local jurisdiction’s entire comprehensive plan and development regulations comply with all the provisions of the GMA

“Updates”, on the other hand, require a review and revision, if needed, of both the comprehensive plan and the development regulations to ensure their compliance with the GMA, according to a staggered schedule set out in RCW 36.70A.130(4):

“Updates” means to review and revise, if needed, according to subsection (1) of this section, and the time periods specified in subsection (4) of this section.

RCW 36.70A.130(2)(a)(in part).

An update requires that counties and cities review and revise, as needed, their plans and regulations, to ensure compliance with the GMA. RCW 36.70A.130(1)(a) and (2)(a). For Whatcom County, the deadline for the update is no later than December 1, 2004. RCW 36.70A.130(4)(a).

The statute specifies that a local jurisdiction must take “legislative action” in adopting its update. RCW 36.70A.130(1)(a). Legislative action is defined as “the adoption of a resolution or ordinance following notice and a public hearing indicating *at a minimum*, a finding that a review and evaluation has occurred and identifying the revisions made,

or that a revision was not needed and the reasons therefore.” RCW 36.70A.130(1)(a)(emphasis added).

The evidence provided to the Board thus far is regrettably incomplete with respect to the notice that was provided to the public. The ordinance (Index 1) recites that legal notice was published but it does not indicate what the notice said. Was notice published that the amendments proposed for adoption in Ordinance 2004-017 would constitute the County’s update of the rural element of its comprehensive plan? Or did the notice simply say that the County was considering adoption of the particular amendments to the comprehensive plan? We do not know.

Petitioners provided the Board with a copy of Resolution 2004-009, which adopts the docket of proposed comprehensive plan amendments. But the resolution does not state that these docketed amendments are for the purpose of meeting the County’s update obligations. Exhibit A to the resolution contains docket #2004-A, entitled “2004 Comp Plan Update” but it is questionable whether the title of a docket file, buried in an attachment to a resolution that does not flag its update purpose for the public, would by itself meet the requirements for public notice that what was proposed was an update of the County’s comprehensive plan and development regulations.

Perhaps more significantly for the purposes of this appeal, the description of the 2004 Comp Plan Update file does not include a review or revision of the rural element of the County’s comprehensive plan:

Review and, as needed, revise the comprehensive plan to ensure continued compliance with the Growth Management Act, incorporate new information, and reflect new priorities. This review will include urban growth areas (UGAs), airport/land use compatibility, housing, capital facilities, transportation, mineral resource lands, and recreation.



*Exhibit A to Resolution 2004-009.*<sup>3</sup>

This may be evidence that the County does not intend to revise its rural element but it also strongly suggests that the comprehensive plan amendments adopted in Ordinance 2004-017 were not part of the 2004 update which the County is undertaking. Furthermore, the County argues that the amendments adopted in Ordinance 2004-017 were part of its 2003 comprehensive plan amendment cycle, an assertion supported by the findings in the ordinance that state that the planning commission hearings were published and held in 2003. Ordinance 2004-017, Findings of Fact 1-2.

We agree with the Petitioners that there is confusing language in Ordinance 2004-017. It states that the GMA requires counties and cities to review and, if needed, revise comprehensive plans to ensure continued compliance with the GMA (Ordinance 2004-017 first Whereas clause; Finding of Fact #4). However, nowhere in Ordinance 2004-017 does the County find that it has undertaken a review and evaluation of its comprehensive plan (or any part of it), nor does it state that the amendments are revisions of the comprehensive plan to meet the update requirements. The statute provides that such findings are a minimum requirement for legislative action to meet the update requirements.

Such findings are also part of the requirement for public notice of an update so that the public may understand what is occurring and participate in a meaningful way as a result. We have grave concerns about finding some kind of implied update has occurred when that might have the effect of curtailing public participation in the update process.

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<sup>3</sup> Petitioners failed to include the Index number on their exhibits and are reminded that the Index number must be placed on any exhibit pursuant to the Board's prehearing order in this case.

At oral argument the County asserted that, while this challenge was not ripe, no later challenges to the County's revision of the rural element would be timely. Counsel stated that challenges to the revision of the rural element and land use plan (except urban growth areas) must be timely brought as challenges to Ordinance 2004-0017 but, at the same time, that those challenges would not be ripe until December 1, 2004. This would mean that all challenges for failure to conduct adequate revisions under RCW 36.70A.130 had to have been brought in response to Ordinance 2004-0017 (that is, within 60 days of publication of that ordinance) but that the County could not be held to having conducted its revisions of the rural element and land use element in Ordinance 2004-0017 until the deadline for doing so had passed.

Clearly, the County cannot have it both ways. Either Ordinance 2004-0017 was its update of the rural element and land use element (excepting the urban growth areas) pursuant to RCW 36.70A.130(1)(a) or it wasn't. If it was, then the issues are ripe. If it wasn't, then challenges to the update cannot be brought as a challenge to Ordinance 2004-017.

The public should not be left to guess whether the County has undertaken its update or not. The statutory requirement for minimum legislative findings ensures that the public is on notice that the update is taking place. Therefore, the County cannot be found to have undertaken an update, even a partial update, of its comprehensive plan unless the challenged enactment unambiguously finds that a review and evaluation of the comprehensive plan and development regulations has occurred and identifies the revisions made; or if the County finds that a revision was not needed, the enactment must give the reasons for that. RCW 36.70A.130(1)(a).

Until the County takes legislative action indicating what it has revised, what it has not revised, and the reasons for its decision, it has not undertaken an update. RCW

36.70A.130(1)(a). Because Ordinance 2004-017 does not include such findings, it is not an update within the meaning of RCW 36.70A.130.

***Conclusion:*** We find that Ordinance 2004-017 was not an update within the meaning of RCW 36.70A.130 and therefore the County was not required to comply with the update requirements in the adoption of the ordinance. Therefore, Issues 5, 6 and 7 of the Petition for Review will be dismissed. However, we expressly find that the time for bringing any claims alleging noncompliance in the revision of or failure to revise *any* portions of the Whatcom County comprehensive plan will not begin to run until the County has either completed its update as required by RCW 36.70A.130; or failed to meet the statutory deadline of December 1, 2004.

### ***3. Motion For Dismissal For Untimely Challenge***

The County's argument that the Petitioners' challenge is untimely is closely related to its ripeness challenge. The County argues that Petitioners may not challenge here any portions of the 1997 Comprehensive Plan that were not changed by Ordinance 2004-0017. Respondent's Memorandum in Support of Dispositive Motions at 1-4. The 1997 comprehensive plan must be presumed valid, the County argues, and any challenge to it should have been brought within 60 days of publication of its adoption in 1997.

Because we find that Ordinance 2004-017 simply adopted amendments to the County's comprehensive plan as part of its annual comprehensive plan review cycle (WCC 20.10.120) rather than updating the comprehensive plan, we agree that the challenges brought to Ordinance 2004-017 are limited to the amendments that were made.

**Conclusion:** Petitioners' challenges to unamended sections of the County's comprehensive plan in Issue No. 1 may not be brought here. However, the challenges to the amended sections of the County's comprehensive plan – policies 2GG-2, 2GG-3, 2HH-3, 2JJ-5, 2LL-4, and 2NN-7 – are proper and will proceed to hearing at the hearing on the merits.

#### **4 Motion to Dismiss ( arguing LAMIRD provisions are optional )**

The County also argues that Issues 1 and 3 of the Petition for Review should be dismissed because those issues assert that the County must apply the LAMIRD provisions of RCW 36.70A.070(5)(d) when those provisions are optional. Respondent's Memorandum in Support of Dispositive Motions at 6-7. The County asserts that the LAMIRD provisions are optional because the statute says that the rural element "may" allow for limited areas of more intensive rural development:

Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element *may allow for limited areas of more intensive rural development*, including necessary public facilities and public services to serve the limited area...:

RCW 36.70A.070(5)(d)(in part)(emphasis added)

It is true that the County need not allow for limited areas of more intensive rural development under this provision and so it is optional whether it does so. However, if the County decides to allow areas of more intensive rural development in the rural zone, those areas must conform to the GMA requirements for such limited areas of more intensive rural development in RCW 36.70A.070(5)(d).

The Petition challenges changes to a variety of LAMIRD-like designations in the Whatcom County comprehensive plan: small towns, resort and residential subdivisions, crossroads commercial, suburban enclaves, and major transportation corridors. The Petitioners argue that these are areas where more intensive rural

development is allowed but that they do not conform to the requirements for such more intensive rural development set out in the GMA.

Issues 1 and 3 of the Petition for Review raise these claims. Since we find that Ordinance 2004-017 is not an update within the meaning of RCW 36.70A.130, these claims may only be raised with respect to the amended language of the ordinance. However, we reiterate that a challenge to the failure to meet the County's update obligations as to the County's rural element and LAMIRD designations may still be brought when the County either takes the legislative action required by the statute or after the County fails to meet the statutory deadlines for doing so.

**Conclusion:** While it is optional for the County to allow areas of more intensive rural development, if the County does allow such areas, they must conform to the requirements of RCW 36.70A.070(5)(d). To the extent that Issues 1 and 3 challenge the amended comprehensive plan provisions on this basis, those issues may go forward.

### **FINDINGS OF FACT**

1. Whatcom County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.70A.040.
2. Petitioners submitted comment letters to the Whatcom County Council raising the matters that are the subject of this appeal prior to the County's adoption of Ordinance 2004-0017.
3. Ordinance 2004-0017 adopted comprehensive plan amendments as part of the County's annual comprehensive plan review cycle on March 9, 2004.
4. Notice of the adoption of Ordinance 2004-0017 was published on March 13, 2004.
5. Petitioners filed their appeal of Ordinance 2004-0017 with this Board on May 10, 2004.
6. The extensive comments submitted to the County in writing by Petitioners regarding Ordinance 2004-0017 raise the matters which are challenged in the Petition for Review and are reasonably related to the issues in this case.

7. In Issues 5, 6 and 7 of the Petition for Review, Petitioners allege that the County failed to revise its pre-existing comprehensive plan provisions as required for an update pursuant to RCW 36.70A.130(1)(a).
8. Under RCW 36.70A.130, two major types of obligations are imposed upon counties and cities to review their comprehensive plans and development regulations. First, plans and regulations are subject to “continuing review and evaluation”. RCW 36.70A.130(1)(a). This type of review is usually done in an annual comprehensive amendment cycle. RCW 36.70A.130(2)(a). The amendments adopted under this process may be appealed to the boards to determine compliance of those amendments with the GMA, but there is no requirement that amendments must be made annually for the purpose of bringing comprehensive plans and development regulations into compliance with all the provisions of the GMA.
9. A second requirement of RCW 36.70A.130(1)(a) is that comprehensive plans and development regulations be subjected to an “update”. Updates require counties and cities to take legislative action to review and revise, as needed, comprehensive plans and development regulations, according to a staggered schedule set out in RCW 36.70A.130(4). In an update, counties and cities must review and revise their plans and regulations, as needed, to ensure compliance with the GMA. RCW 36.70A.130(1)(a) and (2)(a).
10. For Whatcom County, the deadline for adoption of an update is no later than December 1, 2004. RCW 36.70A.130(4)(a).
11. The legislative action required in an update is defined as “the adoption of a resolution or ordinance following notice and a public hearing indicating *at a minimum*, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.” RCW 36.70A.130(1)(a).
12. Nowhere in Ordinance 2004-017 does the County find that it has undertaken a review and evaluation of its comprehensive plan (or any part of it), nor does it state that the amendments are revisions of the comprehensive plan to meet the update requirements. RCW 36.70A.130(1)(a) provides that such findings are a minimum requirement for legislative action to meet the update requirements.
13. Nothing in the evidence before the Board indicates that the notice provided to the public concerning the adoption of Ordinance 2004-017 advised the public that the ordinance was an update of the County’s comprehensive plan or any part of it.
14. The Board should not find some kind of implied update has occurred when that might have the effect of curtailing public participation in the update process.
15. Until the County takes legislative action indicating what it has revised, what it has not revised, and the reasons for its decision, it has not undertaken an update. RCW 36.70A.130(1)(a). Because Ordinance 2004-017 does not

include such findings, it is not an update within the meaning of RCW 36.70A.130.

16. Because the County's deadline for taking its legislative action is December 1, 2004, any claim of a failure to act is premature until then.
17. The time for bringing any claims alleging noncompliance in the revision of or failure to revise any portions of the Whatcom County comprehensive plan will not begin to run until the County has either completed its update as required by RCW 36.70A.130; or failed to meet the statutory deadline of December 1, 2004.
18. The Petitioners challenge sections of the County's comprehensive plan that were not amended by Ordinance 2004-017. These unchanged portions of the County's comprehensive plan are not subject to challenge because 60 days has passed since the publication of their original adoption and therefore they are not timely challenged here. RCW 36.70A.290(2).
19. The County need not allow for limited areas of more intensive rural development in the rural zone. However, if the County decides to allow areas of more intensive rural development in the rural zone, it must follow the GMA requirements for such areas. RCW 36.70A.070(5)(d)
20. Petitioners' challenge to the County's amendments to the comprehensive plan adopted in Ordinance 2004-0017 are timely.

## **CONCLUSIONS OF LAW**

- A. This Board has jurisdiction over the parties to this appeal.
- B. The Petitioners have standing to bring all the issues raised in the Petition for Review.
- C. This Board has jurisdiction over Issue No. 1 to the extent that it challenges the amendments to the comprehensive plan adopted in Ordinance 2004-017. This challenge was timely brought.
- D. The Board lacks jurisdiction over challenges to unchanged provisions of the comprehensive plan, including the Designations Map – Issue No. 2, Issue No. 3, Issue No. 4 - and those challenges in Issue No. 1 that address unchanged provisions of the comprehensive plan,.
- E. The challenges based on the County's alleged failure to meet its update obligations under RCW 36.70A.130(1)(a) and (2)(a) – Issues 5, 6 and 7 - are not ripe because Ordinance 2004-017 is not an update within the meaning of RCW 36.70A.130(2)(a) and (1)(a).

## **II. ORDER**

Based on the foregoing reasons, the Board orders as follows:

1. The County's motion to dismiss due to lack of standing is DENIED;

2. The County's motion to dismiss because the LAMIRD provisions of RCW 36.70A.070(5) are optional is DENIED;
3. The County's motion to dismiss Issues 5, 6, and 7 based upon ripeness is GRANTED WITHOUT PREJUDICE to the Petitioners' right to timely file a petition based upon the County's update or failure to timely update pursuant to RCW 36.70A.130;
4. The County's motion to dismiss Issues 2, 3 and 4 as untimely because they challenge unchanged portions of the County's comprehensive plan is GRANTED WITHOUT PREJUDICE to the Petitioners' right to timely file a petition based upon the County's update or failure to timely update pursuant to RCW 36.70A.130; and
5. The County's motion to dismiss the challenges to unchanged portions of the County's comprehensive plan in Issue No. 1 is also GRANTED WITHOUT PREJUDICE to the Petitioners' right to timely file a petition based upon the County's update or failure to timely update pursuant to RCW 36.70A.130.
6. Issue No. 1, to the extent that it challenges the compliance of the adopted amendments with the GMA, will go forward to a hearing on the merits.

This is not a final order for purposes of appeal pursuant to RCW 36.70A.300(5) or motions for reconsideration pursuant to WAC 242-02-832. This order shall become final for appeal and reconsideration purposes upon entry of this Board's Final Decision and Order in this case.

DATED this 2nd day of August, 2004.

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Margery Hite, Board Member

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Holly Gadbaw, Board Member

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Gayle Rothrock, Board Member